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November 12, 2015

By ECF:

The Honorable Naomi Reice Buchwald
United States District Court for the Southern District of New York
500 Pearl Street
New York, New York 10007

Re: *Boelter v. Advance Magazine Publishers Inc.*, Case No. 15-cv-05671-NRB (S.D.N.Y.)

Dear Judge Buchwald:

I write on behalf of Plaintiff Suzanne Boelter (“Plaintiff”) to advise the Court of the Third Circuit’s recent decision in *In re Google Inc. Cookie Placement Consumer Privacy Litigation*, -- F.3d --, 2015 WL 6875340 (3d Cir. Nov. 10, 2015) (“Google”).

Google is highly relevant to the pending motion to dismiss because it discusses Article III standing without economic loss. In *Google*, the defendants argued that the plaintiffs lacked Article III standing because they did not allege an economic loss. *See id.* at *4. The Third Circuit stated that “the defendants’ emphasis on economic loss is misplaced,” and held that “a plaintiff need not show actual monetary loss for purposes of injury in fact. Rather, ‘the actual or threatened injury required by Art. III may exist solely by virtue of statutes creating legal rights, the invasion of which creates standing.’” *Id.* at *4 (quoting *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 373 (1982)).

Further, *Google* is highly relevant because it rebuts the holding in *Ross v. AXA Equitable Life Ins. Co.*, 2015 WL 4461654 (S.D.N.Y. July 21, 2015). In *Google*, the Third Circuit affirmed the district court’s dismissal of all federal claims. *See Google*, 2015 WL 6875340, at *18. The Third Circuit only reinstated plaintiffs’ claims under California state law. *See id.* That did not impact the Third Circuit’s holding that “a plaintiff need not show actual monetary loss for purposes of injury in fact.” *Id.* at *4. Plaintiff respectfully requests that the Court consider *Google* as supplemental authority for her opposition to Defendant’s motion to dismiss because the Third Circuit rendered its decision after Plaintiff’s opposition was filed on November 3, 2015.

Very truly yours,



Joseph I. Marchese

CC: All counsel of record (via ECF)